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Paper No. 4

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In re Application of
Pitzen et al.
Application No. 09/954,526
Filed: March 5, 2001
Attorney Docket Number: 54525.000055

OFFICE OF PETITIONS
DECISION ACCORDING STATUS-
UNDER 37 C.F.R. §1.47(b)

This is in response to the petition for status under 37 C.F.R. §1.47(b), filed January 4, 2002.

The petition is **GRANTED**.

The above-identified application was filed on March 5, 2001, without an executed oath or declaration. Accordingly, on November 5, 2001, a Notice to File Missing Parts of Application - Filing Date Granted was mailed, requiring applicant to submit an executed oath or declaration, and pay a surcharge for late filing.

In response, on January 4, 2002 applicant filed:

- a declaration of Patrick A. Doody, attorney of applicant,
- assignment documents between 3M and Linvatec,
- documents to establish ownership of invention,
- correspondence with non-signing inventors,
- declaration and power of attorney signed by Patrick Doody on behalf of Linvatec Corporation, (assignee),
- the surcharge under 1.16(e) for late filing, and
- a petition (and fee) under §1.47(b).

Applicant has satisfied the requirements of §1.47(b)¹. Applicant, by declaration of persons with first hand knowledge and documentary evidence, demonstrated that the non-signing inventors have been presented with a copy of the application papers for signature and that they have refused by their conduct to sign the declaration. Applicant submitted a declaration signed by Patrick A. Doody, attorney for assignee Linvatec Corporation. This declaration has been reviewed and is found in compliance with 1.63, 1.64 and 1.175. Applicant paid the petition fee and included a statement of the non-signing inventors' last known address in the petition. The assignment agreement and documents which establish the chain of ownership establish the applicant's proprietary interest in the application. Applicant has also made a showing of irreparable harm.

This application is hereby accorded Rule 1.47(b) status.

¹ A grantable petition under 37 C.F.R. §1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration; (2) an acceptable oath or declaration; (3) the petition fee; (4) a statement of last known address of the non-signing inventor; (5) proof of proprietary interest; and (6) a showing of irreparable damage or the need to preserve the rights of the parties.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being forwarded to Technology Center 1700 for further processing of the application.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy